

SPECIAL IMMIGRANT JUVENILE (SIJ) STATUS

An immigrant juvenile may be eligible for lawful permanent resident status after obtaining classification as a Special Immigrant Juvenile (SIJ) under certain conditions specified by Federal immigration law. The juvenile must file with the United States Citizenship and Immigration Services (USCIS) for the grant of SIJ status, and the granting of status is discretionary with USCIS. Any unmarried person under the age of 21 who meets the conditions listed below may apply for SIJ status. The juvenile may file with USCIS for lawful permanent resident status, which may require an interview with a USCIS official. For most juveniles, this process can occur at the same time the juvenile files for SIJ status, except for those in detention or removal proceedings with a Federal immigration judge.

REQUIRED COURT FINDINGS FOR ELIGIBILITY

For eligibility for SIJ status, there must be a finding by a court in the United States with juvenile jurisdiction, signed by the judge, that:

- The juvenile is declared dependent on the court or placed in the custody of an agency or department of a state or an individual or entity appointed by the state or a juvenile court located in the United States;
- Reunification with one or both parents is not viable due to abuse, neglect, or abandonment or a similar basis found under state law; and
- There has been an administrative or judicial finding that it would not be in the best interest of the juvenile to be returned to the juvenile's or parent's previous country of nationality or country of last habitual residence.

Note that the juvenile is eligible to apply for SIJ status if reunification is not viable with one parent. A juvenile may be eligible to apply for SIJ status if declared dependent due to abuse, neglect, or abandonment by one parent even if the juvenile is still living with the other parent.

A "juvenile court" is defined as a court having jurisdiction under State law to make judicial determinations about the care and custody of juveniles. Dependency, guardianship, probate and delinquency courts are examples.

A "dependent" is a child legally committed to, or placed under the custody of, an agency or department of the State, or an individual or entity appointed by a State or juvenile court.

Placements in foster homes, group homes, with relatives or with guardians qualify.

The dependency finding may be based on a court filing by a state agency, such as law enforcement, social services, or child protective services, or by a private individual, such as a family member or friend, even if no state agency is involved in the case.

ADDITIONAL REQUIREMENTS

In addition, the following requirements must be met:

- The juvenile must file for SIJ status (Form I-360) before reaching the age of 21;
- The juvenile must be unmarried at filing and remain so until SIJ status is granted;
- The juvenile court must retain jurisdiction until SIJ status has been granted by USCIS, subject to exceptions for age related cases and certain other circumstances; and
- The dependency case was not filed as a sham solely to obtain immigrant status.

The process for obtaining SIJ status begins with a finding in a court in the United States with juvenile jurisdiction that the juvenile meets the three required court findings for eligibility. A court with juvenile jurisdiction means any court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles. Some examples include dependency, guardianship, probate, and delinquency courts.

If the juvenile is in the physical and legal custody of the U.S. Department of Health and Human Services (HHS), the juvenile court needs the consent of HHS to make custody or placement decisions for the juvenile. The juvenile court can still take jurisdiction over the juvenile and make findings to enable the juvenile to apply for SIJ status.

The grant of SIJ status makes the juvenile eligible to apply for adjustment to lawful permanent resident status, either concurrently or later. Most of the grounds for inadmissibility will then apply to the juvenile. An alien juvenile who engages in any of the following areas of conduct may be ineligible for adjustment of status based on the grant of SIJ status:

- Known or reasonably believed to have engaged in drug trafficking;
- Being a drug addict;

- Having engaged in prostitution;
- Violation of protection order;
- Use of false documents; or
- Having a mental condition that is a threat to others.

Violent offenses, sex offenses, and gang activity are particularly problematical, as they often can lead to denial of any immigration benefit.

THE ISSUE OF AGE

To assure that the juvenile remains eligible for SIJ status, the juvenile court must retain jurisdiction until the juvenile is granted SIJ status. If juvenile jurisdiction terminates at age 18 under state law, USCIS will not deny the petition if the record shows that the termination of jurisdiction was solely due to age.

While a person under the age of 21 may file for SIJ status under Federal immigration law, some states do not permit a finding of dependency for a person who has reached the age of 18. In those states a person who has not been declared dependent before reaching the age of 18 will not be eligible to apply for SIJ status.

For proof of age, USCIS regulations provide that the applicant submit documentary evidence of the alien's age, in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age.

THE EFFECTS OF JUVENILE DELINQUENCY PROCEEDINGS

A delinquency court can be the source of findings making a juvenile eligible for SIJ status.

A juvenile delinquency determination is not considered an adult criminal conviction.

- What constitutes juvenile delinquency is to be determined by Federal law.
- Federal law defines a juvenile as anyone under the age of 18, and juvenile delinquency as an act committed by a juvenile that would be a crime if committed by an adult.
- Certain crimes committed by juveniles may be considered adult criminal convictions under Federal law

Juvenile delinquency proceedings may still carry risks for a juvenile. The disqualifying factors for adjustment of status listed above do not require a criminal conviction to make an alien inadmissible or deportable, so a juvenile who admits to any of those areas of conduct in the context of a delinquency proceeding may then be ineligible for adjustment of status. Note that a juvenile who engages in prostitution may be eligible for a T Visa, as a juvenile who engages in commercial sex can be considered a victim of a severe form of trafficking without having to show coercion under Federal law.

Further, USCIS may look at evidence of bad acts, including evidence from a delinquency proceeding, in determining whether to exercise discretion on behalf of an applicant for a variety of forms of discretionary immigration relief, including naturalization.

ENGAGING IN PROSTITUTION

Engaging in prostitution can make a juvenile ineligible for adjustment of status, even if the juvenile's behavior is not classified as criminal under state law. On the other hand, the juvenile may be eligible for a T visa under 8 U.S.C 1101(a)(15) (T) as a victim of a severe form of trafficking as defined by the Trafficking Victims Protection Act (TVPA), 22 U.S.C 7102 and 7105.

EFFECT ON FAMILY IMMIGRATION

A person who becomes a Lawful Permanent Resident through SIJ status will no longer be considered the child of his or her parents for immigration purposes, even if parental rights were not terminated. The child will thus not be able to use the lawful status attained through SIJ status as a means to obtain lawful status for his or her parents. This bar applies to both parents, even if SIJ status was obtained due to abuse, neglect, or abandonment by only one parent. It also applies even if parental rights were not terminated.